

DECISION

1700g... 25124
7909
Pur

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211548**DATE:** May 17, 1983**MATTER OF:** H.S. Shoemaker & Sons, Inc.**DIGEST:**

Cancellation of solicitation is proper where solicitation provided for consideration of prompt payment discounts in bid evaluation contrary to provision in Defense Acquisition Regulation § 2-407.3

H.S. Shoemaker & Sons, Inc. (Shoemaker), protests the decision of the United States Army Corps of Engineers (Corps), Vicksburg District, to cancel invitation for bids No. DACW38-83-B-0032 and to resolicit the procurement under revised bid evaluation provisions.

We summarily deny the protest.

The decision by the Corps to cancel the invitation was based upon the fact that Defense Acquisition Regulation (DAR) § 2-407.3 (1976 ed.) had been amended by Defense Acquisition Circular 76-36, June 30, 1982, to prohibit the consideration of offered prompt payment discounts in the evaluation of bids. The Corps had overlooked this change and had not deleted the standard provision in the invitation which permitted evaluation of prompt payment discounts. The Corps did not realize this oversight until after bids were opened and evaluated bids without considering offered prompt payment discounts. Shoemaker protested this evaluation to the Corps because Shoemaker's bid was low when the prompt payment discount was evaluated.

We have held that award must be made in accordance with the terms of the solicitation. Beacon Winch Company, B-204787, October 9, 1981, 81-2 CPD 299. Therefore, the only manner in which award could be made under this solicitation would be to consider the discounts in the evaluation. If the discounts are not to be considered, the IFB must be canceled and a new IFB issued.

025596

While we have permitted the evaluation of discounts in similar circumstances, those cases involved the situation where the circular took effect after bid opening or between issuance of the solicitation and bid opening. See Space Services International Corporation, B-207888.4, .5, .6, .7, December 13, 1982, 82-2 CPD 525; Geronimo Service Co., B-209613, February 7, 1983, 83-1 CPD 130; Emerald Maintenance, Inc.; The Big Picture Company, B-209082, B-209219, March 1, 1983, 83-1 CPD 208.

Here, the circular had been in effect for more than 8 months. Therefore, since the solicitation violates the mandate of DAR regarding discounts, we do not object to the contracting officer's decision to cancel and issue a resolicitation containing the proper clause.

The protest is summarily denied.

for *Milton J. Fowler*
Comptroller General
of the United States